

No. 11,856

IN THE
United States Circuit Court of Appeals
For the Ninth Circuit

BUDGET FINANCE PLAN, INC.,
Appellant,

VS.

JOHN O. ENGLAND, etc., Trustee of
Estate of Buddie Jerome Hayner,
bankrupt,
Appellee.

APPELLANT'S REPLY BRIEF.

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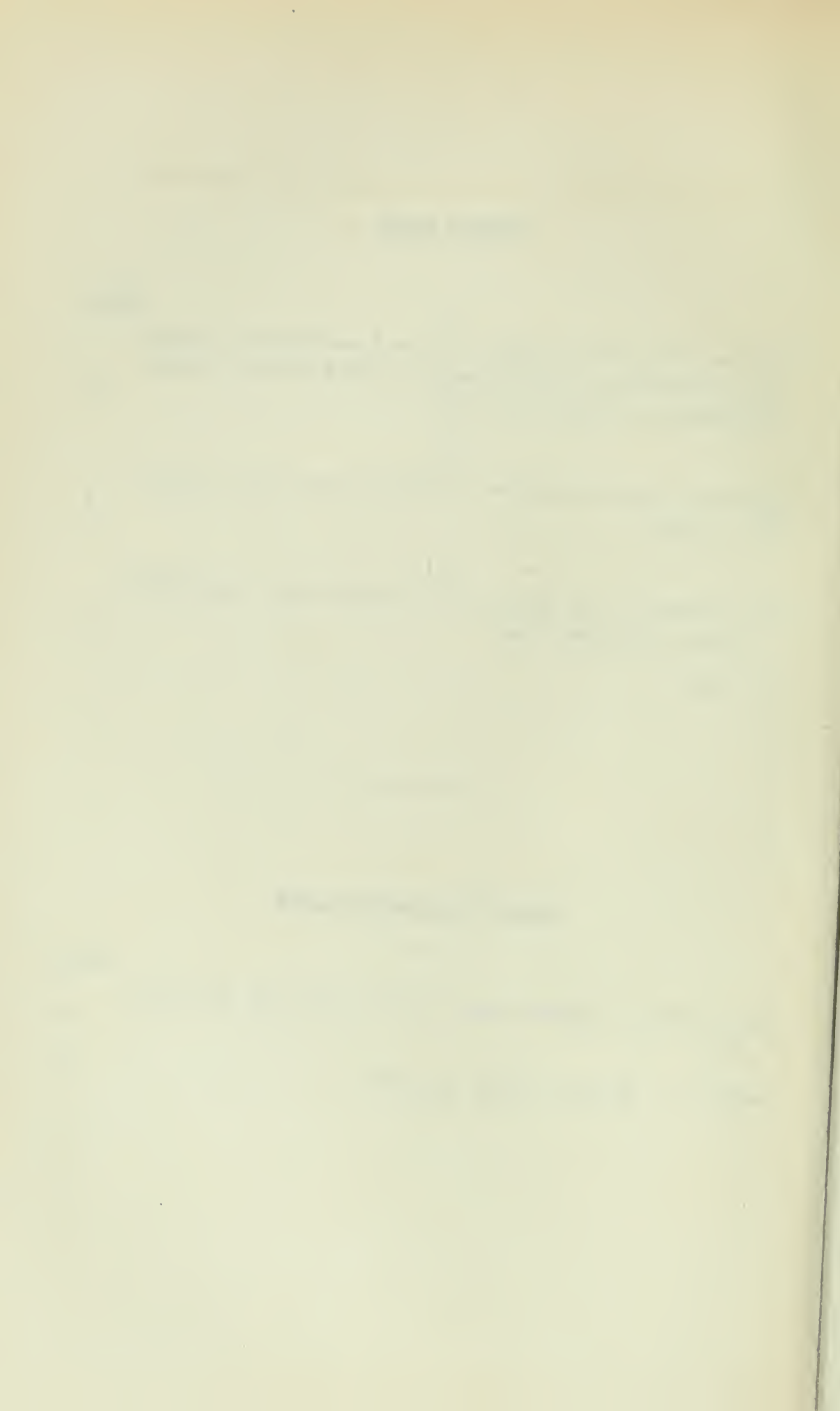
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APPELLANT'S REPLY BRIEF.

In its reply appellant has no wish to repeat the substance of its position as set forth in its opening brief, and relies on its opening argument to controvert the propositions made by appellee and in support of appellant's contention that the orders herein should be reversed. Thus, in the interests of brevity, appellant will confine itself to those few specific matters which appellant believes require particular consideration.

I.

EVIDENCE PROVES THAT PROPERLY ENDORSED CERTIFICATES OF OWNERSHIP ACCOMPANIED CHATTEL MORTGAGE MAILED TO MOTOR VEHICLE DEPARTMENT ON MARCH 21, 1947.

Although certain collateral testimony quoted by appellee (Appellee's Brief pp. 4, 5, and 9) would seem to

lend some color to his contention that properly endorsed certificates of ownership were not forwarded to the Motor Vehicle Department with the certified copy of the mortgage on March 21, 1947, a consideration of *all* of the evidence establishes that appellant did comply with this requirement on the date mentioned. It is unnecessary to go beyond the letter of the Motor Vehicle Department (Exhibit 4), to find convincing and conclusive evidence of the fact. The letter amounts to an official receipt and is self-explanatory.

II.

APPELLEE'S AUTHORITIES DO NOT CONSTITUTE BASIS TO BAR RECOVERY BY APPELLANT.

Appellee cites numerous authorities on the subject of the time in which a mortgage must be recorded to be valid against creditors of the mortgagor, but none of these alter the rule of excusable delay on which appellant is entitled to rely on the facts of this case that the requirement of prompt recording is satisfied:

“* * * only if the recording is done promptly, unless such recording is impracticable or the circumstances of the case warrant delay”.

In re Mercury Engineering, Inc., 68 Fed. Sup. 376 (D.C.S.D.), p. 380.

For example, the very quotation which appellee chooses from the case of *Williams v. Belling*, 76 Cal.

App. 610 (Appellee's Brief, pp. 11, 12), reads as follows:

“Such delay, although not affecting its validity between the parties * * *, would, *if not shown to be excusable*, render the mortgage void as to creditors * * *” (Italics ours.)

III.

TIME ELEMENT IN THE MERCURY AND GARDNER CASES COMPARABLE TO THAT IN THE INSTANT CASE.

Although appellee disputes appellant's computations regarding the number of days delay involved in the *Gardner* and *Mercury* cases (Appellee's Brief, pp. 13 to 15), in which the Courts there found that there was not such delay as to render the respective mortgages invalid, it would ill become appellant to indulge in argument involving the mechanics of computation in cases which are cited to this Court. Suffice to say that appellant believes it has fairly and properly analyzed the decisions referred to in its opening brief, and that they support its position.

CONCLUSION.

In concluding, appellant must again take issue with appellee on a specific point in that appellee is in error in his contention that the validity of the prior liens never was before the Court for determination. (Appellee's Brief, p. 16.) Appellant's petition for reclamation raises the issue. (R. p. 4.)

It is respectfully submitted that the orders of the District Court, confirming the order of the Referee, should be reversed and relief granted to appellant as prayed in its opening brief.

Dated, San Francisco, California,
June 11, 1948.

CARROLL F. JACOBY,
Attorney for Appellant.